

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4979 OF 2019

1. Mrs. Asha Kamal Yadav,
Age : 38 years, Occu.: Service.
Add. Flat No.103-A, Anand Sarita-2,
Krishna Township, Ambadi Road,
Vasai (West), Dist. Palghar – 401 202
2. Amitkumar Jitendra Singh
Age : 35 years, Occu.: Dcotor
3. Jitendra Devnarayan Singh
Age : 63 years, Occu.: Retired
Both residing at Room No.7, Daulat
CHSL, Gawade Nagar (Mini Nagar),
Dahisar (East), Mumbai – 400 068

...Petitioners

Versus

1. The State of Maharashtra (Through Ld.
APP)
2. Smt. Emta Amitkumar Singh
Age : 29 years, Occu.: Teacher
Residing at: Sawari Matthu Chawl, Sai
Baba Road, Jawahar Nagar, Khar
(East), Mumbai – 400 051

...Respondents

Mr. Satyaram Gaud, for the Petitioners.

Mr. S. R. Agarkar, APP for the State.

Dr. Samarth Karmarkar, a/w Vrindavan Patil, i/b Karmarkar
& Asso., for Respondent no.2.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 21st APRIL, 2022

PRONOUNCED ON : 6th JUNE, 2022

JUDGMENT:-

1. Rule. Rule made returnable forthwith, and with the
consent of the learned Counsels for the parties heard finally.

2. The challenge in this petition is to an order dated 17th July, 2019 in Criminal Revision Application No.1251 of 2018, passed by the learned Additional Sessions Judge, Greater Bombay, whereby the revision application preferred by the petitioners herein against the order of issuance of process, dated 21st August, 2018, passed by the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, in CC No.1863/SS/2016 lodged by respondent no.2 herein, for the offence punishable under Section 500 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”) came to be dismissed.

3. The background facts leading to this petition can be stated in brief as under:

(a) Smt. Ekta, Respondent no.2 – complainant is the wife of petitioner no.2 – Amitkumar. Petitioner no.3 is the father of petitioner no.2. Mrs. Asha Yadav, petitioner no.1 is the wife of Mr. Kamal Yadav, who is working as a teacher with Brinhanmumbai Municipal Corporation’s Secondary School, Kher Nagar, Bandra (E), Mumbai. Smt. Ekta, the complainant, is also working as a teacher in the said school. The complainant alleged that petitioner no.1 Mrs. Asha Yadav made a false and defamatory imputation against the complainant that the latter has extramarital relations with the former’s husband Mr. Kamal

Yadav. The said imputation, according to the complainant, was made at the behest of petitioner no.2, her husband.

(b) Initially, the complainant addressed complaint to the police officers on 4th January, 2016 against petitioner no.1 Asha Yadav and petitioner no.2 Amitkumar Singh. The complainant further alleged that her father-in-law Jitendra, the petitioner no.3, also made defamatory imputation against her in a meeting with another colleague Mr. Devendra Singh. Likewise, her mother-in-law Smt. Vidya Jitendra Singh (original accused no.4) also made a false and defamatory imputation against her before Mrs. Malati Sharma, another co-teacher that, the complainant had an affair with Mr. Kamal Yadav. The complainant addressed a complaint to the Police Inspector, Nirmal Nagar Police Station, on 15th February, 2016. As no action was initiated, the complainant lodged complaint (CC No.1863/SS/2016) before the learned Magistrate, 32nd Court, Bandra.

(c) The learned Magistrate recorded the verification statements of the complainant and Mr. Devendra Singh (complainant's witness). The learned Magistrate was persuaded to record a finding that there was sufficient material to proceed against the petitioners and Smt. Vidya (original accused no.4)

for the offence punishable under Section 500 read with Section 34 of the Penal Code and, thus, issued the process.

4. Being aggrieved the petitioners and original accused no.4 Vidya, preferred Criminal Revision Application No.1251 of 2018 in the Court of Session, Greater Bombay. By the impugned judgment and order dated 17th July, 2019, the learned Additional Sessions Judge was persuaded to partly allow the revision application and quash and set aside the order of issue of process qua Smt. Vidya (original accused no.4) only. However, the application came to be rejected qua petitioner nos.1 to 3. The petitioners have thus invoked the writ jurisdiction of this Court.

5. By an order dated 9th January, 2020, this Court while granting interim relief observed, *inter alia*, that there was sufficient material to proceed against petitioner no.1 for the offence punishable under Section 500 of the Penal Code and, thus, the petition came to be dismissed qua petitioner no.1 Mrs. Asha Yadav. Notice was, however, directed to be issued to the complainant qua the petition of petitioner nos.2 and 3, the husband and father-in-law of the complainant – respondent no.2.

6. The challenge in this petition is thus restricted to the consideration of the legality, propriety and correctness of the impugned order qua petitioner nos.2 and 3.

7. I have heard Mr. Gaud, the learned Counsel for the petitioners, Dr. Karmarkar, the learned Counsel for respondent no.2 and Mr. Agarkar, the learned APP for the State, at some length. The learned Counsels have taken me through the complaint before the learned Magistrate, documents annexed thereto, the verification statements of the complainant and her witness recorded by the learned Magistrate and the impugned orders as well.

8. Mr. Gaud mounted a three-fold challenge to the order of issuance of process against petitioner nos.2 and 3. First, in view of the provisions contained in Section 202 (1) of the Code of Criminal Procedure, 1973 ("the Code"), it was incumbent upon the Magistrate to postpone the issue of process and either inquire into the matter himself or direct an investigation to be made as petitioner nos.2 and 3 were not residing within the local limits of the area over which the learned Magistrate exercised the jurisdiction. The postponement of issuance of process, where the accused is residing at a place beyond the jurisdiction of the learned Magistrate, being mandatory, under

Sub-section (1) of Section 202 the order is completely vitiated, submitted Mr. Guad. Secondly, there is another infirmity in the procedure adopted by the learned Magistrate, which renders the proceeding non-est in the eye of law. The complainant had not annexed the list of witnesses, mandatorily required to be furnished under Sub-section (2) of Section 204 of the Code, before the issuance of summons. Since no such list of witnesses was furnished, the learned Magistrate could not have assumed jurisdiction to issue process against the petitioners. On both these counts, according to the learned Counsel for petitioner nos.2 and 3, the Revisional Court did not properly appreciate the position in law and brushed aside the aforesaid twin challenge by ascribing unjustifiable reasons.

9. Thirdly, Mr. Gaud submitted that, even otherwise the prosecution of petitioner nos.2 and 3 is extremely far fetched and amounts to abuse of the process of the Court. What the complainant alleges, according to Mr. Gaud, is that the petitioner no.2 had allegedly informed accused no.1 Mrs. Asha Yadav that the complainant had illicit relations with her husband Kamal Yadav. It is not the case that petitioner no.2 had himself made such defamatory imputation. Likewise, petitioner no.3, father-in-law, is roped in on the basis of a bald

and unsubstantiated assertion that he had made the defamatory comment against the complainant before Mr. Devendra Singh. Thus, even on merit, according to Mr. Gaud, the prosecution of petitioner nos.2 and 3 is legally unsustainable.

10. In opposition to this, Dr. Karmarkar submitted that the learned Magistrate as well as the learned Additional Sessions Judge committed no error in recording a finding that sufficient material exists to proceed against petitioner nos.2 and 3. At this nascent stage, the veracity of the allegations is not required to be tested. What has to be seen is the existence of material which justifies the issuance of the process. The complainant has annexed a copy of the letter addressed by petitioner no.1 Mrs. Asha Yadav to her husband Mr. Kamal Yadav, wherein categorical assertion of the complainant having extramarital relations with the said Kamal Yadav are made. It is further alleged that petitioner no.1 Mrs. Asha Yadav became aware of the said extramarital affair from petitioner no.2 – husband of the complainant. Moreover, in the complaint, the complainant has referred to another incident of petitioner no.2 having made a defamatory statement before Ms. Jyoti Prakash Hakimpalli, another colleague of the complainant. As regards the complicity

of petitioner no.3, father-in-law of the complainant, Mr. Devendra Singh lends support to the claim of the complainant. In the face of such material, the learned Magistrate was fully justified in issuing process against petitioner nos.2 and 3. The alleged non-compliance with the requirements under Section 202(1) and 204(2), according to Dr. Kamarkar, is not of material significance. The learned Additional Sessions Judge correctly negatived the challenge on the aforesaid counts. Thus in exercise of writ jurisdiction no interference is warranted, submitted Dr. Karmarkar.

11. As regards the requirement of further inquiry or investigation as envisaged by Sub-section (1) of Section 202, introduced by Code of Criminal Procedure (Amendment) Act, 2005, where the accused resides at a place which is beyond the jurisdiction of the concerned Magistrate, from the phraseology of the expression, “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”, it appears that the amended provision is couched in a mandatory form. In the case of *Vijay Dhanuka vs. Najma Mamtaj*¹, the Supreme Court ruled that, in the context of the purpose of the said amendment, the use of the expression “shall” and the background and the purpose for which the

1 (2014) 14 SCC 638.

amendment had been brought about, it had no doubt that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

12. In the case of *Abhijit Pawar vs. Hemant Madhukar Nimbalkar and another*² following the aforesaid pronouncement and another judgment in the case of *Mhemood Ul Rehman vs. Khazir Mohammad Tunda*³, the Supreme Court held that the amended provisions cast an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would *prima facie* constitute the offence for which the complaint is filed. The requirement of conducting inquiry or directing investigation before issuing process is not an empty formality.

13. A useful reference can also be made to a recent judgment of the Supreme Court in the case of *Sunil Todi and others vs. State of Gujarat & another*⁴ wherein, the Supreme Court had, *inter-alia*, considered the challenge to the judgment of the High Court, whereby, the High Court had refused to interfere with the

2 (2017) 3 Supreme Court Cases 528.

3 (2015) 12 SCC 420.

4 AIR 2022 Supreme Court 147.

order of issue of process. One of the issues which arose for consideration before the Supreme Court was,

Whether the Magistrate, in view of Section 202 Cr.P.C., ought to have postponed the issuance of process ?

14. After adverting to the object of amending section 202, by the Act 25 of 2005, and the previous judgments enunciating the nature of the said mandate, the Supreme Court declined to interfere with the order of the High Court. On the aspect of the mandatory nature of the requirement section 202(1) of the Code, the Supreme Court extracted the following observations of the Constitution Bench in *Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881* ⁵ :

11. The learned Amici Curiae referred to a judgment of this Court in *K.S. Joseph v. Philips Carbon Black Ltd & Anr.* where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in *Vijay Dhanuka* (supra), *Abhijit Pawar* (supra) and *Birla Corporation* (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.

(emphasis supplied)

15. The aforesaid pronouncement would, thus, indicates that if the Magistrate comes to a conclusion after holding an enquiry that there are sufficient grounds to proceed against the accused, the omission to follow the procedure under section 202(1) may not be fatal.

16. Reverting to the facts of the case, it becomes evident that petitioner nos.2 and 3 are the residents of Mumbai. It would be contextually relevant to note that under Section 16(3) of the Code, the jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area. The learned Metropolitan Magistrate has recorded the verification statement of the complainant and one of the witnesses. The learned Magistrate, after perusal of the allegations in the complaint, material on record and the statements of the complainant and the witnesses recorded a *prima facie* finding that the offence punishable under Section 500 read with Section 34 of the Penal Code was made out. Cumulatively, it seems that the learned Magistrate has considered the allegations in the complaint and the statements recorded during the course of inquiry so as to form an opinion that the offence is *prima facie* made out. Hence, I am not persuaded to accede to the

challenge on the count of non-compliance of the requirement of Sub-section (1) of Section 202 of the Code.

17. This propels me to the challenge on the ground of non furnishing a list of the witnesses along with the complaint. Sub-section (2) of Section 204 reads as under:

“Section 204. Issue of Process.- (1)

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

.....”

18. Laying emphasis on the aforesaid mandate of Sub-section (2) of Section 204, an endeavour was made on behalf of the petitioners to draw home the point that the impugned order of summoning the petitioner nos.2 and 3, is legally untenable. The learned Additional Sessions Judge was of the view that failure to furnish a list of witnesses was not fatal to the continuation of the prosecution. The learned Additional Sessions Judge drew support from a judgment of this Court in the case of ***Pramila Mahesh Shah vs. Employees’ State Insurance Corporation, Nagpur and another*⁶**. In the said case dealing with a challenge based on non-compliance of Sub-section (2) of Section 204 of the Code, a learned Single Judge enunciated the position as under:

6 2002(2) Mh.L.J.101.

“29. Coming to Section 204(2) of Criminal Procedure Code, I must say that the non-compliance of this provision does not affect the jurisdiction of the Magistrate either to issue process or to try the case. This view has been taken by the Apex Court in *Noorkhan v. State of Rajasthan*, *Madhaorao Pandurang v. Yeshwant*; *Abdullah Bhat v. Ghulam Mohd. Wani*, and *Shashi Ndir v. R.C. Mehta* (supra). The procedural laws are hand maid of justice and the question of prejudice is of paramount consideration in respect of breach of procedural provisions. Therefore, even if it was to be held that the provisions of Section 204(2) are mandatory, that, by itself, would not vitiate the issue of process or the jurisdiction of the Court and where the matter is at the initial stage, directions can be given to furnish the copy of list of witnesses, if any, before the proceedings actually commenced. The stage of the proceedings is relevant to determine the prejudice, if any, caused to the accused. In the case under consideration, the substantive proceedings had not yet started. Therefore, in the circumstances, directions to the complainant to supply copy of witnesses, if any, within a period of four weeks from the receipt of the copy of the order by the trial Court would be considered as sufficient compliance of Section 204(2) of Criminal Procedure Code, 1973.”

19. A useful reference can also be made to another judgment in the case of *Bhiku Yeshwant Dhangat and others vs. Baban Maruti Barate and another*⁷ wherein another learned Single Judge of this Court, after advertng to the provisions contained in Section 204 of the Code, observed that it was not peremptory that a list of witnesses should be separately filed and it was sufficient if the complainant incorporated the names of witnesses in the complaint itself so that the accused becomes aware of the possible witnesses. The observations in paragraph 10 are material and hence extracted below:

7 2001 Cri. L.J. 295.

“10. What is material or relevant for the present case at hand is Sub-section (2) of Section 204 of the Code of Cr. P.C., 1973. The learned Magistrate has issued process simpliciter on the basis of the complaint though list of witnesses, as required, was not filed by the complainant along with his complaint. There is, thus, non-compliance of Section 204(2) of the Cr. P. C., 1973, Mr. Gokhale appearing for the original complainant concedes that the names of the witnesses were not furnished. along with the complaint- Of course, it should not be interpreted that while giving the list of witnesses in the case, separate list has to be furnished by the complainant. It is sufficient if the complainant incorporates the names of the witnesses in the complaint itself instead of giving a separate list. But the names of the witnesses must be mentioned and the accused must be made aware, of the possible witnesses to be examined by the complainant. Taking cognizance of the complaint without there being any disclosure as to the witnesses whom the complainant would be examining, is improper.”

20. Indisputably Sub-section (2) of Section 204 is worded in a mandatory form. However, the purpose of insisting upon the list of the prosecution witnesses is required to be kept in view. The purpose is to put the accused on notice as to the witnesses whom the complainant proposes to examine. If from the perusal of the allegations in the complaint, the identity of the witnesses, whom the complainant may examine, becomes evident, then the omission to file the list of the witnesses may pale in significance. On the other hand, if the complaint does not disclose the identity of the witnesses, who may be examined by the complainant, and there is no list of witnesses filed by the complainant, the accused would suffer serious prejudice. On the touchstone of prejudice, it is pertinent to note that, in the

case at hand, the complainant has named the witnesses, before whom petitioner nos.2 and 3 allegedly made defamatory imputations, with sufficient clarity. The failure to file a list of witnesses, from this standpoint, does not detract materially from the order of issuance of process. In the circumstances of the case, the default on the part of the complainant is of such a nature that it can be cured by directing the complainant to file a list of witnesses before the complaint proceeds further.

21. On the merits of the matter, Mr. Gaud made an endeavour to drag home the point that the thrust of the complaint was that petitioner no.1 Mrs. Asha had asserted that it was the petitioner no.2, who had informed her about the alleged extramarital relations between the complainant and Mr. Kamal Yadav, the husband of petitioner no.1 Mrs. Asha. This assertion of petitioner no.1, even if taken at par, would not furnish a justifiable ground to draw an inference that petitioner no.2 made a defamatory statement, urged Mr. Gaud.

22. The aforesaid submission, at first blush, appears attractive. However, when subjected to close scrutiny the premise of the submission falls through. Firstly, it is imperative to note that the complainant annexed a copy of the notice dated 29th December, 2015 (Exhibit-A), addressed by petitioner no.1

Mrs. Asha to Mr. Kamal Yadav. Paragraph 5 of the said notice reads as under:

“5. My client further state that you are a teacher by profession and attached with BMC School, Kher Nagar, Bandra (E), Mumbai – 400 051, wherein you made extramarital relations with a lady ‘Ekta Singh’ who is also employee with same school as a teacher. My client came to know by husband of said Ekta Singh about your relations. My client had become serious and while she checked our cell phone, she had found various chatting on whatsapp in between in and said Ekta Singh, which discloses that you had made illicit relations with her. My client also visited your office/school and informed the principal of said school and therefore enquiry pending against you.”

(emphasis supplied)

In addition, in the complaint, the complainant has categorically asserted that petitioner no.2, her husband, in collusion with petitioner no.1, has defamed her.

23. Secondly, in the complaint, the complainant has adverted to another incident of publication of the defamatory statement. The complainant alleged that petitioner no.2 met her colleague, Miss. Jyoti Prakash Hakimpalli, and informed her that the complainant was having an extramarital affair with Mr. Kamal Yadav and that he had instigated the wife of Mr. Kamal Yadav to address a letter to the authorities and complain about the alleged extramarital relations between the complainant and Mr. Kamal Yadav.

24. The situation which thus obtains is that there are allegations in the complaint to the effect that the source of the

defamatory imputation made by petitioner no.1 is the petitioner no.2, who had allegedly made defamatory statement against the complainant.

25. Petitioner no.3 allegedly made a statement before Mr. Devendra Singh, whose statement was recorded by the learned Magistrate, that the atmosphere of the school was being vitiated on account of the teachers like the complainant because the complainant was having affairs with many of the teachers *(school ka maahol Ekta jaisi teachers ki wajah se kharab ho raha hai, kyunki woh kaafi teachers ke saath chakkar chala rahi hai).*

26. Mr. Gaud would urge that the aforesaid statement may not fall within the dragnet of Section 500 of the Penal Code. A mere verbal defamatory statement is attributed to petitioner no.3. In the backdrop of the matrimonial discord between the complainant and petitioner no.2, it would be hazardous to continue the prosecution for defamation on the basis of such statement, urged Mr. Gaud.

27. Intention to cause harm to the reputation of the complainant is the linchpin of the offence of defamation. A profitable reference in this context can be made to a judgment of

the Supreme Court in the case of *Subramanian Swamy vs. Union of India*⁸, wherein the Supreme Court observed as under:

“165. To constitute the offence, there has to be imputation and it must have made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasizes on the intention or harm.”

(emphasis supplied)

28. In the case of *Kishore Samrite vs. State of Uttar Pradesh and others*⁹, the Supreme Court expounded as to what, “reputation” connotes. The following observations in paragraph 58 are instructive and hence extracted:

“58. The term ‘person’ includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. “Reputation” is an element of personal security and is protected by Constitution equally with the right to enjoyment of life, liberty and property. Although “character” and “reputation” are often used synonymously, but these terms are distinguishable. ‘Character’ is what a man is and ‘reputation’ is what he is supposed to be in what people say he is. ‘Character’ depends on attributes possessed and ‘reputation’ on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.”

(emphasis supplied)

8 2016 Cri. L. J. 3214.

9 (2013) 2 Supreme Court Cases 398.

29. In the context of the aforesaid legal position, reverting to the facts of the case it is true that the allegations in the complaint qua petitioner no.3 that he had made the afore-extracted defamatory imputation is supported by Mr. Devendra Singh (the complainant's witness). Yet, the context cannot be lost sight of.

30. First and foremost, the allegations in paragraph 16 of the complaint qua petitioner no.3 are general in nature and lack the particulars of time and place. The complainant alleged that petitioner no.3 met Mr. Devendra Singh and other members of the Teachers' Union and maligned her reputation. The latter part of the allegations of making defamatory imputation before the other colleagues and Teachers' Union members is bereft of certainty of time and place and the identity of the persons before whom the said imputation was made. Even Mr. Devendra Singh's statement recorded before the learned Magistrate does not add any credence to the aforesaid imputation except the fact that the said imputation was allegedly made in the month of February-2016.

31. It would be contextually relevant to note that on 4th January, 2016 the complainant had made allegations specifically against petitioner no.1 Mrs. Asha and petitioner no.2

Mr. Amitkumar; whereas, in the complaint dated 15th February, 2016 addressed to Nirmal Nagar Police, allegations were made against Vidya (discharged accused no.4) only. There is no contemporaneous material to lend support to the claim of the complainant that petitioner no.3, her father-in-law, had also made such imputations against her.

32. It is also pertinent to note that the imputation attributed to petitioner no.3 is of general nature. Undoubtedly, an innuendo also constitutes defamation. However, a bald assertion, bereft of any particulars, especially in the backdrop of the matrimonial dispute, where the intention to rope in the relatives of the husband of the complainant is, *prima facie*, betrayed, it would be rather difficult to draw an inference that a *prima facie* case for the offence punishable under Section 500 of the Penal Code, is made out.

33. The upshot of the aforesaid consideration is that, at this stage, there is adequate material to proceed against petitioner no.2 as well for the offence punishable under Section 500 of the Penal Code. However, qua petitioner no.3, the learned Additional Sessions Judge lost sight of the fact that there is not much qualitative difference between the case against petitioner no.3 and that against Mrs. Vidya (discharged accused no.4). I

am, therefore, persuaded to hold that the petition deserves to be allowed qua petitioner no.3 Jitendra Devnarayan Singh.

34. Hence, the following order:

: O R D E R :

- (i) The petition stands partly allowed, qua petitioner no.3 - Jitendra Devnarayan Singh.
- (ii) The impugned order dismissing the revision application qua petitioner no.3 - Jitendra Devnarayan Singh, stands quashed and set aside.
- (iii) The order of issuance of process dated 21st August, 2018 in CC No.1863/SS/2016 stands quashed and set aside qua petitioner no.3 - Jitendra Devnarayan Singh.
- (iv) Petitioner no.3 - Jitendra Devnarayan Singh stands discharged of the offence punishable under Section 500 read with Section 34 of the Indian Penal Code, 1860.
- (v) The petition stands dismissed qua petitioner no.2 - Amitkumar Jitendra Singh.
- (vi) The complaint to proceed against petitioner nos.1 and 2 only.
- (vii) The complainant shall file a list of witness in CC No.1863/SS/2016 within a period of four weeks from the date of this order. Thereafter, the learned Metropolitan Magistrate shall proceed in accordance with law.

(viii) It is clarified that the observations made hereinabove were for the purpose of determination of the prayer for quashing the order of issuance of process and they may not be construed as an expression of opinion on the merits of the matter and the learned Magistrate shall not be influenced by any of the observations made hereinabove while deciding the complaint for the offence punishable under Section 500 of the Penal Code, against petitioner nos.1 and 2.

Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]